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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

CARRIE WABS, Plaintiff and Appellant, v. COUNTY OF BUTTE, Defendant and Respondent.	C086665 (Super. Ct. No. 16CV00527)

Plaintiff Carrie Wabs was injured when the vehicle she was driving left a straight, level, road at a bridge in rural Butte County, hit the end of a metal guardrail, and rolled over onto its driver's side. No other vehicles were involved in the accident. Wabs filed an action for damages against the County of Butte (the County) alleging the guardrail did not meet current standards and constituted a dangerous condition of public property under Government Code section 835.[1] The trial court granted summary judgment in favor of

[1] Undesignated statutory references are to the Government Code.

the County on the basis that, as a matter of law, the guardrail did not constitute a dangerous condition. On appeal, Wabs contends: (1) the trial court erroneously relied solely on evidence of no prior similar accidents in making its determination, and (2) the declaration of her expert raised a triable issue of fact. We will affirm the judgment. The County carried its burden to establish a prima facie case of no dangerous condition, and Wabs has failed to demonstrate a triable issue of fact.

I. BACKGROUND

A. Statutory Background

"The Government Claims Act (§ 810 et seq.; the Act) 'is a comprehensive statutory scheme that sets forth the liabilities and immunities of public entities and public employees for torts.' [Citation.] Section 835, the provision of the Act at issue in this case, prescribes the conditions under which a public entity may be held liable for injuries caused by a dangerous condition of public property. [Citation.] Section 835 provides that a public entity may be held liable for such injuries 'if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, [and] that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred.' In addition, the plaintiff must establish that either: (a) '[a] negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition . . . ,' or (b) '[t]he public entity had . . . notice of the dangerous condition . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.' " (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1104-1105.)

A "dangerous condition" is defined as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (§ 830, subd. (a).) As further explained in

section 830.2, "[a] condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used."

B. Factual Background

Wabs filed a complaint against the County alleging a cause of action for a dangerous condition of public property under section 835. Wabs alleged the guardrail at issue "did not meet current standards," thereby "creating a foreseeable risk of the type of injury" she suffered.

The County moved for summary judgment on the grounds that: (1) the guardrail did not constitute a dangerous condition of public property as a matter of law, and (2) the County has design immunity under section 830.6 for the installation of the guardrail.[2]

Both sides submitted a declaration from an expert in civil and traffic engineering regarding these issues, but the evidence the County produced regarding the physical characteristics of the location, lack of prior accidents, and the circumstances surrounding the accident itself are largely undisputed.

The Diane's Ditch No. 2 Bridge is on Cana Highway about half a mile west of Hamilton Nord Cana Highway and crosses a small drainage or irrigation ditch from which it derives its name. The guardrail that is the subject of these proceedings was installed on the bridge sometime between October 1966 and January 1974. It consisted

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[2] "[T]he public entity is immune from liability if placement of the object was part of a plan or design for which the entity reasonably gave its discretionary approval." (*Cordova v. City of Los Angeles, supra,* 61 Cal.4th at p. 1111; see § 830.6.)

of twelve-inch metal beam guardrail bolted to steel posts. Those posts were bolted to steel brackets that were themselves bolted to the concrete deck of the bridge.

On October 22, 2015, at about 6:20 p.m., Wabs was driving westbound on Cana Highway, west of its intersection with Hamilton Nord Cana Highway in rural Butte County. Cana Highway in this area is straight, flat, and without any sight obstructions. The weather was clear and dry, and sunset time was about 6:18 p.m. The sun was not in Wabs's eyes, and she was not aware of any other traffic on the road. As she approached the bridge, Wabs's vehicle left the roadway and its front right struck the end of the guardrail that runs along the north end of the bridge. The collision caused the vehicle to turn onto its driver's side, injuring Wabs.

From 1991 through the date of this accident, over two million vehicles are estimated to have passed over the bridge.[3] The County has no record of any repair on the guardrail since its installation or any other accidents at that location. Images of the guardrail prior to the accident show it was intact and had no signs of accident damage. County employees responsible for maintaining the guardrail and surrounding infrastructure have no memory of the guardrail ever needing repairs.

In opposition to the summary judgment motion, Wabs did not dispute any of the above evidence regarding the accident or the location, nor did she dispute the assertion that "the evidence is overwhelming in the bridge's entire history of nearly 50 years, [she] is the only person to have ever struck the guardrail with a vehicle."

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[3] This estimate was based on traffic counts that were performed in 1991, 1995, 1998, 2002, and 2006 on Cana Highway at a location about two miles west of its intersection with Hamilton Nord Cana Highway. The most recent count was performed in October 2006 and showed an average daily traffic count of 274 vehicles. The Director of the County of Butte Public Works Department declared, "Per the American Association of State Highway and Transportation Officials, [average daily traffic count] less than 400 is defined as a Very Low Volume Local Road."

The trial court granted the County's motion on the basis that the guardrail did not constitute a dangerous condition as a matter of law. "For [Wabs] to establish a dangerous condition, she must show a substantial risk of injury; a remote possibility of harm does not constitute a substantial risk; and evidence of an absence of similar accidents constitutes a valid basis for the court to find that the property was not in a dangerous condition[.] It is undisputed that over 2,000,00 vehicles had passed the accident location in the twenty-five years from the time the guardrail was installed until the accident. [Wabs] admits the portion of roadway where the guardrail is located was flat and straight with no curves or sight obstructions. Furthermore, [Wabs]'s expert['s] opinion is insufficient to create an issue of fact to defeat the motion." The court did not reach the question of design immunity.

Judgment was entered accordingly, and Wabs filed a timely appeal.

II. DISCUSSION

A. Standard of Review

We begin by summarizing several principles that govern the grant and review of summary judgment motions under Code of Civil Procedure section 437c.

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law." (*Merrill v. Navegar, Inc*. (2001) 26 Cal.4th 465, 476; see also Code Civ. Proc., § 437c, subd. (c).) On appeal, "[w]e review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports." (*Merrill v. Navegar, Inc., supra,* at p. 476.) A defendant moving for summary judgment "bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850; see also Code Civ. Proc., § 437c, subd. (p)(2).) The defendant "bears an initial burden of production to make a

prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar v. Atlantic Richfield Co., supra*, at p. 850.) Once the defendant meets its initial burden, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. (*Id*. at pp. 849-850.)

"[T]his de novo review does not obligate us to cull the record for the benefit of the appellant in order to attempt to uncover the requisite triable issues. As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority. In other words, review is limited to issues which have been adequately raised and briefed." (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116.)

With these principles in mind, we now turn to the issues raised by Wabs's briefing.

B. Trial Court's Ruling

Wabs contends the judgment must be reversed because the trial court erroneously relied solely on evidence of no prior similar accidents in making its determination that the guardrail did not constitute a dangerous condition as a matter of law. "[T]he absence of other similar accidents is 'relevant to the determination of whether a condition is dangerous.' " (*Lane v. City of Sacramento* (2010) 183 Cal.App.4th 1337, 1346.) It is not, however, dispositive, and it does not compel a finding of nondangerousness absent other evidence. (*Ibid*.) As we discuss below, there was other evidence pertaining to this issue. Whether the trial court did or did not rely solely on the absence of other similar accidents in finding as a matter of law that the guardrail struck by Wabs was not a dangerous condition is irrelevant. "We review the ruling, not the rationale, and are not bound by the trial court's stated reasons supporting its ruling." (*City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 373.) The question on appeal is whether there is a triable issue of fact as to whether the unflared

guardrail was a dangerous condition, and it is one we review de novo. We now turn to this dispositive question.

C. No Triable Issue of Fact

"Whether property is in a dangerous condition often presents a question of fact, but summary judgment is appropriate if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines that no reasonable person would conclude the condition created a substantial risk of injury when such property is used with due care in a manner which is reasonably foreseeable that it would be used." (*Mathews v. City of Cerritos* (1992) 2 Cal.App.4th 1380, 1382.)

Wabs contends the declaration of her expert, Laurence Neuman, raised a triable issue of fact regarding whether the guardrail constituted a dangerous condition of public property. This argument is inadequately supported. First, she does not cite any law regarding dangerous conditions to support her claim. Second, her only citations to the substance of her expert's declaration are each to the entire five-page document.[4] " 'It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.' " (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) " 'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.' " (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) For these reasons alone, her claim fails.

To the extent we have performed an unassisted study of the record, we reach the same conclusion. Neuman's declaration concludes, "The failure to flare the end of the railing created a significant, foreseeable risk of injury to drivers crossing the bridge at

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[4] Wabs cites exact page numbers to support her recitation of Neuman's educational background, the evidence he reviewed to render his opinion, and that he inspected the area of the accident after the guardrail was repaired.

Diane's Ditch #2." "[E]xpert opinions on whether a given condition constitutes a dangerous condition of public property are not determinative: '[T]he fact that a witness can be found to opine that such a condition constitutes a significant risk and a dangerous condition does not eliminate this court's statutory task, pursuant to [Government Code] section 830.2, of independently evaluating the circumstances.' " (*Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1189.) Summary judgment may still be granted in these circumstances. (*Antenor v. City of Los Angeles* (1985) 174 Cal.App.3d 477, 484.)

A "dangerous condition" is one that creates a substantial risk of injury. (§ 830, subd. (a).) This requirement "means that a condition is dangerous when the risk that an injury will result from the condition is substantial; a condition that creates only a remote possibility of injury is not dangerous even if the extent of injury that may occur is substantial." (*Cordova v. City of Los Angeles, supra,* 61 Cal.4th at p. 1110.) In other words, the substantiality of the risk addresses the probability that an injury will occur, not the extent of any such injury. (*Fredette v. City of Long Beach* (1986) 187 Cal.App.3d 122, 130, fn. 5.) Neuman declared, "[i]t is unknown why Ms. Wabs['s] vehicle strayed out of the westbound lane. However[,] it is known that at times vehicles do stray out of lanes which is the entire reason guard rails [*sic*] are provided at various locations. The reasons that drivers stray out of their lane include avoiding an object or animal in the roadway, roadway and weather issues, distracted driving, and vision difficulties such as sun in their eyes or glare." In light of the evidence that this particular road was straight, flat, unobstructed, and not busy, and the undisputed fact that in "nearly 50 years, [Wabs] is the only person to have ever struck the guardrail with a vehicle," Neuman's generalizations would not permit a reasonable person to conclude the unflared end of *this* guardrail created a substantial risk that a motorist driving in a reasonable manner would be injured by hitting it. Nor is the fact that Neuman declared "[t]he roadway is narrow with a total width on the bridge of only 20 feet" sufficient by itself to change our analysis. We have been directed to no evidence that it is more than remotely possible

that a straight, flat, road of this width (or any width) will be left by a driver exercising due care.

In comparison, in *Hurley v. County of Sonoma* (1984) 158 Cal.App.3d 281, an appellate court found a triable issue of fact regarding whether a concrete bridge abutment seven feet from the highway with no guardrail in between constituted a dangerous condition based on the evidence presented: "The proximity of the abutment to the highway, the slope of the highway, the absence of lighting and the possible lack of warning devices could combine to create a dangerous condition, given the foreseeability of vehicles, for a variety of reasons, straying off the road. [The County of Sonoma]'s traffic engineers declared that three other single car accidents occurred in the general vicinity of appellant's accident when the cars went off the highway and struck an abutment. [The County of Sonoma] could therefore foresee injury occurring to occupants of a vehicle which collides with an abutment after leaving the highway, under the same or similar circumstances." (*Id.* at p. 286.) The appellate court distinguished another case alleging a similar dangerous condition based on the evidence that accident involved clear, daytime conditions, an abutment that was three feet farther away from the outside lane, no accidents in the previous five years, and no issues regarding the slope of the road. (*Id*. at p. 287; see *McKray v. State of California* (1977) 74 Cal.App.3d 59, 61-62.) Thus, *Hurley* illustrates we may not assume there is a substantial risk that motorists driving with due care will leave a road and hit a stationary object. Whether such an object constitutes a dangerous condition depends on the evidence.

Cordova v. City of Los Angeles, supra, 61 Cal.4th 1099, is instructive. In that case, a third party caused another car to hit a tree planted on a center median owned and maintained by the City of Los Angeles. (*Id*. at p. 1102.) The parents of the driver and two passengers filed a wrongful death action against the City under section 835. (*Cordova v. City of Los Angeles, supra,* at pp. 1102-1103.) Our Supreme Court held the City was not entitled to summary judgment merely because the tree did not cause the

third party's negligent driving. (*Id.* at p. 1111.) As relevant to this appeal, the court explained its holding does not mean "that a public entity may be held liable whenever a plaintiff is injured after a third party's conduct causes the plaintiff's vehicle to strike a hard, fixed object on public property close to a road, such as a light post, a telephone pole, a traffic light, a stop sign, or a bridge abutment." (*Ibid*.) Based on this record, Wabs essentially asks us to reach the opposite conclusion. To the extent Neuman opined that a reasonable design would have flared the end of the guardrail, this is insufficient to create a triable issue. "[E]ven when a public entity *unreasonably* decides to place a hard, fixed object on public property, the object is not a 'dangerous condition' with[in] the meaning of section 835 if it does not create a substantial risk that motorists driving in a reasonable manner will be injured by striking it." (*Ibid*.) Here, Neuman's declaration did not provide any evidence from which a reasonable person could conclude the unflared guardrail created a substantial risk that a motorist driving in a reasonable manner would strike it. Thus, Wabs has failed to demonstrate the trial court erred in granting the County's motion for summary judgment.

III. DISPOSITION

The judgment is affirmed. Respondent County of Butte shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

HULL, Acting P. J.

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BUTZ, J.